UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte KAUSHIK GHOSH, MANOJ LEELANIVAS, and
DENNIS FERGUSON

Appeal 2007-1431
Application 09/885,485
Technology Center 2100

Decided: July 12, 2007

Before KENNETH W. HAIRSTON, JOSEPH F. RUGGIERO, and
ALLEN R. MACDONALD, *Administrative Patent Judges*.

HAIRSTON, *Administrative Patent Judge*.

DECISION ON APPEAL

STATEMENT OF THE CASE

Appellants appeal under 35 U.S.C. § 134 from a Final Rejection of claims 1 to 20 and 25 to 34. After submission of the Brief, the Examiner objected to claims 6 to 14, 18, and 26 to 30 as being dependent upon a

rejected base claim, but found that they would be allowable if rewritten in independent form including all of the limitations of the base claims and any intervening claims (Answer 8). Accordingly, claims 1 to 5, 15 to 17, 19, 20, 25, and 31 to 34 remain before us on appeal. We have jurisdiction under 35 U.S.C. § 6(b).

Appellants have invented a method and system for generating traffic information for analysis. The method and system determine path-centric information based on at least one sample derived from addressed data, and then adjusts a traffic metric of a traffic parameter based on the determined path-centric information (Specification 4).

Claim 1 is representative of the claims on appeal, and it reads as follows:

1. A method for generating traffic information for analysis, the method comprising:

a) accepting at least one sample derived from addressed data;

b) determining path-centric information based on the accepted at least one sample; and

c) adjusting a traffic metric of a traffic parameter based on the determined path-centric information.

The prior art relied upon by the Examiner in rejecting the claims on appeal is:

Squire	US 6,745,243 B2	Jun. 1, 2004 (filed Jun. 30, 1998)
Suzuki	US 6,771,637 B1	Aug. 3, 2004 (filed Nov. 12, 1999)

The Examiner rejected claims 1 to 3, 15 to 17, 19, 20, 25, and 31 to 34 under 35 U.S.C. § 102(e) based upon the teachings of Squire. The Examiner rejected claims 4 and 5 under 35 U.S.C. § 103(a) based upon the teachings of Squire and Suzuki.

Appellants contend that Squire does not teach path-centric information and a traffic metric that is adjusted based on the path-centric information (Br. 11). Appellants additionally contend that the combined teachings of the references neither teach nor would have suggested using at least a part of the at least one sample as a search key to find an item with a closest matching key (Br. 18 and 19).

We will sustain the anticipation rejection of claims 1 to 3, 15, 25, and 32 to 34, and reverse the anticipation rejection of claims 16, 17, 19, 20, and 31. We will likewise reverse the obviousness rejection of claims 4 and 5.

ISSUES

Does Squire teach path-centric information and a traffic metric that are adjusted based on the path-centric information?

Do the combined teachings of the references teach or would they have suggested to the skilled artisan the use of at least a part of at least one sample as a search key to find an item with a closest matching key?

FINDINGS OF FACT

Appellants describe a method and system that determines path-centric information based on an at least one accepted sample derived from addressed data, and that adjusts a traffic metric of a traffic parameter based on the determined path-centric information (Figure 2; Specification 4).

Squire describes a method and system that generate traffic information for load balancing analysis (Figures 4 and 5; Title; Abstract; col. 4, ll. 28 to 30). Squire accepts at least one sample (e.g., a network session layer) derived from addressed data (e.g., a packet/datagram that includes at least a source address and a target address) (col. 5, ll. 61 to 67; col. 6, ll. 52 to 67). The controller 502 in Squire determines path-centric information (e.g., the optimal data path through the network) based on the accepted at least one sample of the network session layer (col. 2, ll. 38 to 44; col. 6, ll. 52 to 67; col. 7, ll. 52 to 65). Squire adjusts a traffic metric (e.g., server load or distance between servers) based on the determined path-centric information (col. 2, ll. 38 to 50; col. 10, ll. 64 to 67).

Suzuki describes gateway apparatus 1 to 4 that are located between circuit switched networks and the Internet (Figures 1 and 2; Abstract; col. 5, l. 42 to 49).

PRINCIPLES OF LAW

Anticipation is established when a single prior art reference discloses expressly or under the principles of inherency each and every limitation of the claimed invention. *Atlas Powder Co. v. IRECO Inc.*, 190 F.3d 1342, 1347, 51 USPQ2d 1943, 1946 (Fed. Cir. 1999); *In re Paulsen*, 30 F.3d 1475, 1478-79, 31 USPQ2d 1671, 1673 (Fed. Cir. 1994).

The Examiner bears the initial burden of presenting a prima facie case of obviousness. *In re Oetiker*, 977 F.2d 1443, 1445, 24 USPQ2d 1443, 1444 (Fed. Cir. 1992). The Examiner's articulated reasoning in the rejection must possess a rational underpinning to support the legal conclusion of

obviousness. *In re Kahn*, 441 F.3d 977, 988, 78 USPQ2d 1329, 1336 (Fed. Cir. 2006).

The claims on appeal should not be confined to specific embodiments described in the specification. *Phillips v. AWH Corp.*, 415 F.3d 1303, 1323, 75 USPQ2d 1321, 1334 (Fed. Cir. 2005) (en banc).

During ex parte prosecution, claims must be interpreted as broadly as their terms reasonably allow since Applicants have the power during the administrative process to amend the claims to avoid the prior art. *In re Zletz*, 893 F.2d 319, 322, 13 USPQ2d 1320, 1322 (Fed. Cir. 1989).

ANALYSIS

As indicated supra in the findings of fact, the limitations of claim 1 read directly on the teachings of Squire. Nothing in claim 1 on appeal limits path-centric information to "an origin autonomous system ('AS'), a peer AS, and an AS path," or limits a traffic metric to "a byte count and a packet count" (Br. 11 and 12). The claimed phrase "path-centric information"[1] is broad enough to encompass almost anything that concerns a packet, and its traversal of a network. The same holds true for the claimed phrase "a traffic metric" (Br. 12).

The arguments presented for claim 1 are applicable to claims 2, 3, 15, 25, and 32 to 34 (Br. 11 and 14).

With respect to claims 16 and 17, the path-centric information determined in Squire does not include an origin autonomous system, a peer autonomous system or an autonomous system path (Br. 14 and 15).

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[1] Network and inter-network information are path-centric information (Specification 4 and 5).

Although Squire mentions "bytes of data" (col. 5, l. 67 to col. 6, l. 3) the traffic metric adjusted in Squire is neither a byte count nor a packet count as set forth in claim 19 (Br. 15 and 16).

The traffic parameter in Squire is not among the pairs of parameters set forth in claims 20 and 31 (Br. 16).

Turning to the obviousness rejection of claims 4 and 5, we find that the Examiner's stated rejection lacks "a rational underpinning" to support a conclusion of obviousness because of the lack of a cogent reason to combined the teachings of the references.

CONCLUSIONS OF LAW

Anticipation has been established by the Examiner because Squire does disclose each and every limitation of the claimed invention set forth in claims 1 to 3, 15, 25, and 32 to 34. Anticipation has not been established by the Examiner for claims 16, 17, 19, 20, and 31.

Obviousness has not been established by the Examiner because the applied references to Squire and Suzuki neither teach nor would have suggested to one of ordinary skill in the art the subject matter set forth in claims 4 and 5.

DECISION

The anticipation rejection of claims 1 to 3, 15 to 17, 19, 20, 25, and 31 to 34 is affirmed as to claims 1 to 3, 15, 25, and 32 to 34, and is reversed as to claims 16, 17, 19, 20, and 31. The obviousness rejection of claims 4 and 5 is reversed.

No time period for taking any subsequent action in connection with this appeal may be extended under 37 C.F.R. § 1.136(a)(1)(iv).

AFFIRMED-IN-PART

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